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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANA LESIC) Case No. '19CV369 BEN WVG
Plaintiff,)
v.)
)
UNITED STATES DEPARTMENT OF)
JUSTICE, CRIMINAL DIVISION)
)
and)
)
UNITED STATES DEPARTMENT OF)
STATE,)
)
and)
)
UNITED STATES EXECUTIVE)
OFFICE OF U.S. ATTORNEYS)
)
Defendants.)
-----)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
UNDER THE FREEDOM
OF INFORMATION ACT**

I. INTRODUCTION

1. Plaintiff files this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for injunctive and other appropriate relief seeking disclosure and release of agency records improperly withheld by Defendants U.S. Department of Justice, Criminal Division, U.S. Department of State, and United States Executive Office of U.S. Attorneys.

II. PARTIES

2. Plaintiff Ana Lesic is a native and citizen of Croatia who resides in the Southern District of California. By and through her attorney, Cheri Attix, Plaintiff has requested specific agency records pursuant to the FOIA, 5 U.S.C. § 552.

3. Defendant United States Department of Justice, Criminal Division, (“DOJ”) is an agency within the Executive Branch of the government of the United States. DOJ is an agency within the meaning of FOIA, 5 U.S.C. § 552(f). DOJ has custody and control of the specific agency records requested by Plaintiff pursuant to FOIA.

4. Defendant United States Department of State (“DOS”) is an agency within the Executive Branch of the government of the United States. DOS is an

agency within the meaning of FOIA, 5 U.S.C. § 552(f). DOS has custody and control of the specific agency records requested by Plaintiff pursuant to FOIA.

5. Defendant United States Executive Office of U.S. Attorneys (“EOUSA”) is an agency of the Department of Justice within the Executive Branch of the government of the United States. EOUSA is an agency within the meaning of FOIA, 5 U.S.C. § 552(f). EOUSA has custody and control of the specific agency records requested by Plaintiff pursuant to FOIA.

III. JURISDICTION

6. This action arises under the FOIA pursuant to 5 U.S.C. § 552, which grants the district court of the United States “jurisdiction to enjoin [an executive] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. §§ 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question) as this action arises under the Freedom of Information Act, 5 U.S.C. § 552.

7. The aid of this Court is further invoked under 28 U.S.C. §§ 2201-2, authorizing a declaratory judgment and any further necessary and proper relief.

IV. VENUE

8. Venue is properly with this court pursuant to 28 U.S.C. § 1391(e) because the Defendants are all agencies of the United States; the Plaintiff resides in

this judicial district; and there is no real property involved in this action. The FOIA also provides for venue in the judicial district where the Plaintiff resides. 5 U.S.C. § 552(a)(4)(B).

V. TIME FOR DEFENDANT TO RESPOND

9. Pursuant to the FOIA, Defendants have thirty (30) days to respond to this Complaint. 5 U.S.C. § 552(a)(4)(C).

VI. STATEMENT OF FACTS

10. Plaintiff's suit is based on information she requested regarding an extradition request by her home country. On information and belief, Croatia initiated this request as long ago as 2008. Based on newspaper reports in Croatia, the United States is believed to have issued a refusal to this request on an unknown date.

A. DOJ FOIA Request

11. On August 6, 2018, Plaintiff, by and through her attorney, properly filed a FOIA request for specific agency records from DOJ pursuant to the Freedom of Information Act via U.S. Post Office Priority Mail, certified return receipt requested to the address given on the DOJ's Criminal Division FOIA information page at <https://www.justice.gov/criminal/crm-freedom-information-act>. The Plaintiff's request to the DOJ is attached as Exhibit A.

12. On September 17, 2018, the DOJ responded by email acknowledging receipt of the Plaintiff's FOIA request on August 13, 2018. This response assigned the matter a case number (CRM-300678529) and invoked an additional ten days' response time pursuant to 5 U.S.C. § 522(a)(6)(B)(i)-(iii). The DOJ's response is attached as Exhibit B.

13. On November 28, 2018, the DOJ responded to Plaintiff's email status inquiry by stating that the request had been placed on the complex track and that the average time for a complex track request is 203 days. The DOJ's email is attached as Exhibit C.

14. As of the date that this Complaint is filed, DOJ has failed to conduct a legally adequate search for the requested agency records within the time period mandated by the FOIA and has failed to produce all responsive agency records to Plaintiff within that same time period.

B. DOS FOIA Request

15. On August 1, 2018, Plaintiff properly filed a FOIA request for specific agency records from DOS pursuant to the Freedom of Information Act via U.S. Post Office Priority Mail, certified return receipt requested to the address given on the DOS's FOIA information page at <https://foia.state.gov/Request/FOIA.aspx#Step-4>. The Plaintiff's request to the DOS is attached as Exhibit D.

16. On September 11, 2018, the DOS responded by mail acknowledging receipt of the Plaintiff's FOIA request on August 14, 2018. This response assigned the matter a case number (F-2018-06274) and stated that, "we have placed your request in the complex category." The DOS response letter is attached as Exhibit E.

17. As of the date that this Complaint is filed, DOS has failed to conduct a legally adequate search for the requested agency records within the time period mandated by the FOIA and has failed to produce all responsive agency records to Plaintiff within that same time period. Plaintiff's requests to the Defendants have now been pending for six months without a response.

C. EOUSA FOIA Request

18. On August 1, 2018, Plaintiff properly filed a FOIA request for specific agency records from EOUSA pursuant to the Freedom of Information Act via U.S. Post Office Priority Mail, certified return receipt requested to the address given on the EOUSA's FOIA information page at <https://www.justice.gov/usao/resources/making-foia-request>. The Plaintiff's request to the EOUSA is attached as Exhibit F.

19. On August 29, 2018, EOUSA responded by email acknowledging receipt of the Plaintiff's FOIA request on August 14, 2018. This response assigned the matter a case number (EOUSA-2018-005400) and invoked an additional ten

days' response time pursuant to 5 U.S.C. § 522(a)(6)(B)(i)-(iii). The response noted that the Plaintiff's request had been assigned to the complex track and that while "simple requests usually receive a response in approximately 30 business days, [...] complex requests necessarily take longer." The EOUSA's response is attached as Exhibit G.

20. As of the date that this Complaint is filed, EOUSA has failed to conduct a legally adequate search for the requested agency records within the time period mandated the FOIA and has failed to produce all responsive agency records to Plaintiff within that same time period.

21. Plaintiff's requests to the Defendants have now been pending for six months without a response.

XIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Where the agency has failed to respond within the prescribed 20-working-day period, the requester is deemed to have exhausted her administrative remedies, and the requester may file suit in the federal district court to enforce the FOIA. 5 U.S.C. § 552(a)(6)(C)(i); 5 U.S.C. § 552(a)(4)(B).

XII. CAUSE OF ACTION (FOIA VIOLATION, 5 U.S.C. § 552)

23. Plaintiff incorporates the allegations in the paragraphs above as though fully set forth here.

24. The FOIA statute requires that a response to a request be issued within 20 days, excepting Saturdays, Sundays, and legal public holidays. 5 U.S.C. § 552(a)(6)(A)(i). Although an agency may extend the response time by an additional ten working days pursuant to 5 U.S.C. § 522(a)(6)(B)(i)-(iii), there is no provision in the FOIA for any additional response time.

25. All three Defendants have violated the FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's request within the twenty (20) working day responsive time period set forth at 5 U.S.C. § 552(a)(6)(A)(i). The two Defendants who invoked an additional 10-day response period pursuant to 5 U.S.C. § 522(a)(6)(B)(i)-(iii) have additionally failed to respond within their self-set deadline. Plaintiff's requests to the Defendants have now been pending for six months without a response.

26. The Defendants are unlawfully withholding the responsive agency records requested by Plaintiff, in violation of 5 U.S.C. § 552.

XIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Order the Defendants to conduct a search of any and all records responsive to Plaintiff's FOIA request and demonstrate that it

employed search methods reasonably likely to lead to the production of records responsive to Plaintiff's FOIA request;

(3) Order the Defendants to produce, by a date certain, any and all non-exempt agency records responsive to Plaintiff's FOIA request and produce a Vaughn index of any responsive records withheld under a claim of exemption;

(4) Enjoin the Defendants from withholding any and all non-exempt agency records responsive to Plaintiff's FOIA request;

(5) Award costs and reasonable attorney's fees pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(E); and

(6) Grant such other relief as the Court deems just and proper.

Respectfully submitted on this 22nd day of February 2019.

S/ Cheri Attix, Esq.
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